



Competition Council
Republic of Latvia

**ANNUAL
REPORT
2015**





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THE COMPETITION COUNCIL. PASSPORT OF THE INSTITUTION

Efficiently operating companies motivated to offer high quality, broad variety, innovations, competitive prices and other benefits are formed in the conditions of fair competition to win the battle for the consumers' preferences.

Equal conditions of competition for business is an essential prerequisite for investments - both for starting and developing business.

Operational results:

- ▶ companies do not get involved in cartels and do not conclude any other prohibited agreements
- ▶ the large companies dominating in their sector do not abuse their market power
- ▶ mergers that could create monopolies or too large companies that are able to violate interests of the consumers and cooperation partners do not take place
- ▶ laws, regulations and other decisions and conduct of the state or local government do not restrict free and fair competition

Core values:

justice, professionalism and independence

Our resources:

Budget of EUR 1 060 814 plus experience and knowledge gained during 23 years of operation of the institution plus 46 knowledgeable and motivated employees



Foto: Marta Logina

The aim of the Competition Council is to build a fair and equal competition environment for the benefit of the entire of society - consumers and companies.



46 EMPLOYEES

3 COUNCIL MEMBERS

Adopt decisions by voting - act as the first instance court, deciding on the investigation performed by case handlers. The Chairperson of the Council also manages the work of the institution.

10 LAWYERS

Prepare the legal justification for the decisions of the Council. Represent the institution in courts. Prepare draft laws and regulations. Assess whether the documents prepared by other institutions distort competition, and recommend solutions.

23 CASE HANDLERS

Identify and investigate violations. Follow market developments and changes in the law and regulations. Consult companies. Give lectures and seminars.

2 ECONOMISTS

Prepare economic justification for decisions and studies of the Council. Explore and develop new methods of econometric analysis.

8 PERFORMERS OF SUPPORT FUNCTIONS

Establish communication with the society. Organise international cooperation. Organise human resources, quality management, record-keeping and resources of the company.

2015 IN NUMBERS

~ 51 000 000 €

public benefit from the operation of the Competition Council, i.e. overcharge prevented

29 warned companies

20 assessed and cleared mergers

16

terminated legal proceedings, all in favour of the state

1 042 440 €

finances applied to companies

1 052 030 €

previously applied fines paid into the state budget

8

dawn raids (unannounced visits) involving 25 companies

8 established violations of the Competition Law and

29 penalised companies

14

opinions issued containing recommendations to correct laws or regulations distorting competition

3 violations prevented by means of negotiations

18 completed sector inquiries

6

drafted guidelines helping the companies to understand the Competition Law and cooperate with the Competition Council

135

received and evaluated applications





FOREWORD BY THE CHAIRWOMAN

In a public report, we annually summarise our actions taken to ensure that the residents of Latvia are not only able to purchase products and services of good quality and sufficient choice and at prices conforming to the market situation, but are also able to organise business in the conditions of equal competition.

In addition to the qualitative assessment of our work, this year we went one step further and calculated the specific numerical result. The work of the Competition Council within the period of three years has provided society with a benefit of approximately EUR 51 million. This means that each euro provided for the financing of operation of the authority from the state budget has yielded approximately EUR 52.

Internationally recognised methodology developed by OECD and used by the professionally highly recognised competition supervision authorities of Great Britain, the USA and other countries was especially adjusted for Latvia to be used in the calculation. It is based on the assumption that any potential losses not caused to consumers due to the competition authority prohibiting or preventing specific violations serve as a public benefit. Such result provides strong motivation for further work. In 2016, we will strictly handle severe violations while applying expedited solutions to smaller ones. We are planning to develop guidelines for the companies to

better understand their rights. We will train the organisers of procurements to identify the most wide-spread violation of Latvia - procurement cartels. We will follow the actions of the state and local governments to assess whether they distort competition. We will cooperate with other institutions in Latvia and abroad to provide a comprehensive solution to problems in the market. We will learn our newly acquired responsibilities in the control of economic activity carried out by retailers and state and local government businesses. We will look for new methods to work better and more efficiently.

And - we need your support. Report violations if you detect any. It can be done anonymously. Inform us about any laws or regulations preventing equal competition. Our joint effort will allow discrepancies to be eliminated faster and more purposefully.

Skaidrīte Ābrama
Chairwoman of the Competition Council

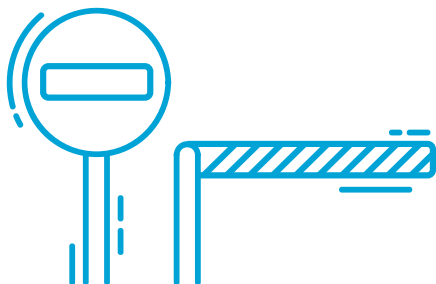
PROHIBITED AGREEMENTS

Cartel schemes in public procurements

In 2015, the Competition Council **found five prohibited agreements**, and they **were all cartel schemes** among the procurement applicants. 26 companies were involved in violations, and the Competition Council imposed fines on them comprising a total amount of EUR 305 179.38. Another 23 companies were warned about involvement in 10 similar violations of a smaller scale and severity. Prohibited agreements caused damage to state and municipal institutions and capital companies organising procurements in 15 different fields. Penalised companies are the entities supplying hospitals and health centres with medical devices, providing computer equipment to the Corruption Prevention and Combating Bureau, forestry services to the State Joint Stock Company “Latvijas valsts meži” and demounting works to the State Joint Stock Company “Latvenergo”.

Companies use leniency programme

Part of the companies, in the scope of four violation cases in 2015, **used the leniency programme** - admitted their responsibility for the violation after the initiation of the case and informed the Competition Council about the way the prohibited agreement was carried out or other violation episodes. Fines were reduced in the scope of the leniency programme to companies contributing significant information to the investigation, and they were not excluded from participation in public procurements.



During the year, the Competition Council carried out dawn raids or unannounced visits in

25 companies



ABUSE OF DOMINANT POSITION

Restored tugboat competition in the Freeport of Riga

In 2015, the Competition Council concluded an investigation of long-term distortion of competition in the market of tugboat services in the Freeport of Riga. A settlement was reached with the violator - Freeport of Riga Authority, prescribing that the Freeport Authority **would cease to provide commercial tugboat services** and the discrimination of private tugboat service companies. According to the settlement the Freeport Authority has **paid a fine of EUR 622 363.40 into the state budget** for the abuse of a dominant position and distortion of competition. The first violation in the activities of the Freeport of Riga was established by the Competition Council in 2009, a similar repeated violation was also established in 2011 and 2015. The Freeport Authority used its administrative power to ensure competition advantages for the tugboats of its owned SIA "Rīgas brīvostas flote" and to delay the opportunity of the private tugboat companies to operate at the port.

Negotiation process – an alternative tool for the effective resolution of disputes

Last year, in three cases, the Competition Council helped to resolve disputes between companies by means of negotiations, thus efficiently **preventing damage without the initiation of a formal and lengthy investigation**. As a result, SIA "Dobeles namsaimnieks" changed the rules on the installation of water meters, ensuring an opportunity for the private companies to offer their services. SIA "ŪDEKA", after the conclusion of discussions with the Competition Council developed new draft agreements on services of the water sector, thus eliminating unequal competition conditions in the market of installation of water meters and their seals in Ventspils. Waste management company SIA "Eco Baltia Vide" have changed the terms of its service, as due to the unclear wording of their terms, in addition to entering into an agreement regarding the provision of basic services, the clients also entered into an agreement regarding additional services, not understanding that they would have to pay for these additional services regardless of their use.

Any consumer and company suffering from a violation of the Competition Law is entitled to receive compensation for damages from the violator



The companies, prior to
14 transactions, consulted
the authority on how
to better prepare a
merger notification

MERGERS AND NOTIFIED AGREEMENTS

The smaller companies join together to compete with the large companies

Last year the Competition Council assessed **20 mergers and three notified cooperation agreements**. Thus, the decisions of the institution influenced the development of competition in a total of 18 industries in the national economy segment of more than EUR 2.1 million.

A trend observed in 2014, when the majority of mergers and allowed agreements took place among the small fuel retailers, thus forming stronger competition against the market leaders in a broader territory, continued in 2015. Mergers have also frequently taken place among food producers.

Foundation of a new company as a precondition for a transaction

The Competition Council may issue binding conditions eliminating the damage if the merger can harm competition. Conditions can affect the company's behaviour, for example, cooperation with suppliers, price changes or discount policy. Conditions that apply to a change of the company structure or splitting it up are also possible. In 2015, by allowing the merger of SIA "Vides investīcijas", SIA "ZMK investīcijas" and SIA "Vides pakalpojumu grupa", **the Competition Council for the first time prescribed the condition of a structural change**, ordering by means of reorganisation, part of a business involved in the collection of household waste to be separated and transferred to other owners. In compliance with this condition, a new waste management company - SIA "Pilsētvides serviss" was formed, transferred to new owners and commenced operation.



SECTOR INQUIRIES

Preconditions for the development of competition in the electricity market for households

The Competition Council, after market analysis, made an overall positive assessment of the opening of the electricity market for competition in the household sector. At the same time, the authority concluded that market development would require consumers to actively use their rights to look for and select the best offer. Even though restrictions do not exist for new companies to enter the market, the **desire of the companies to start selling electricity to households can be reduced by JSC “Sadales tīkls” being in a dominant position and a too extensive connection with JSC “Latvenergo”** that could give competition advantages for this historically largest company in Latvia.

Disorder in the provision of burial services

Burial services are used by consumers in emotionally difficult times when often there is no opportunity to evaluate several offers. During the sector inquiry for the protection of consumer interests the Competition Council established that the competition is distorted by a failure to inform a consumer on the costs of the service, the extensive connection of burial services to hospitals, the operation of the companies owned by the municipalities, many burial services failing to pay taxes and other discrepancies. The Competition Council, in cooperation with the State Revenue Service and Consumer Rights Protection Centre, **initiated the development of regulation for burial services and the informing of consumers.**

Risks of LMT and Lattelecom merger

Due to topical discussions regarding the merger of companies, the Competition Council **carried out a feasibility study of the transaction and provided information regarding significant risks.** The main concern is the liquidation of potential and already existing competition of these companies in the internet market household sector. Market structure of the mobile communication services could also be deformed, by the creation of a service package granting significant advantages to one operator and forming an almost impenetrable barrier for the development of other operators. A risk exists that *Lattelecom* could provide less favourable conditions of cooperation to other operators compared to *LMT*.

In 2015, the Competition Council reviewed a total of

18 markets

LITIGATION

Court judgements - in favour of the state

16 legal proceedings regarding appealed decisions of the Competition Council were completed last year. In 15 proceedings, the Court did not reverse the decisions of the Competition Council, recognising them as lawful and justified. One proceeding was completed and the decision of the Competition Council came into force after the conclusion of a settlement agreement.

One of the most important decisions of the year: the decision of the Competition Council to penalise SIA "Austrumu Energoceltnieks" - one of 26 electrical constructors, which had entered into prohibited agreements on participation in a total of more than 300 procurements - was recognised as justified by the judgment of the Supreme Court in the autumn of 2015.

Settlements for the faster restoration of justice

In 2015, the Competition Council, **for the first time, entered into settlements** with companies breaching the law during the investigative stage of **the case, or even prior to the initiation of proceedings.**

Up to now settlements - administrative agreements, were entered into only when the decision of the Competition Council was appealed before the Court. Settlements allow to save resources of the authority and the courts and they speed up the payment of a fine. The fine for the companies is usually reduced. Admission of liability for the violation serves as a precondition for the settlement. The decision of the Competition Council enters into force after the settlement. One settlement during the investigative stage of the case was reached last year with the Freeport of Riga Authority, which undertook to pay the fine and restore the competition of tugboats at the port. One settlement prior to the initiation of the case was reached with fuel retailers who had not timely notified their merger.



Decisions of the Competition Council and related court judgements can be found at www.kp.gov.lv



CHANGES IN THE LEGAL FRAMEWORK OF THE COMPETITION LAW

Competition Law undergoes improvements

The work of more than three years on modernisation of the Competition Law was completed in 2015, and draft amendments to the Law were submitted to the Saeima. Amendments were developed taking into consideration recommendations by the OECD and the best practices for applying competition law.

Draft amendments to the Law foresee broader use of the leniency programme, more precise definition of investigative powers of the Competition Council, specifying of criteria for merger notification and introduction of a merger fee, and other matters.

New retail trade regulation

In May 2015, the Saeima adopted the Law on the Prohibition of Unfair Retail Trade Practices that starting from 1 January 2016 would replace and regulate in more detail the prohibition of the abuse of a dominating position in retail trade previously stipulated in the Competition Law.

The new law defines principles of fair cooperation with food suppliers for retailers, determining that the retailer may not transfer its expenses to the supplier, must take regard of the ability of the supplier to fulfil the order and the right to receive a payment, and may not affect the cooperation of a supplier with other companies. Non-food retail trade is regulated separately.

The Competition Council consulted business NGOs in developing the draft law and guidelines



IMPACT OF STATE AND MUNICIPALITIES ON COMPETITION

Unjustified formation of state and municipal businesses will be restricted

State and municipal companies often enjoy benefits provided by the administrative resources that are not available to private competitors. In addition, in accordance with the *in-house* principle the state and municipalities may use their companies without organising public procurement. Thus, there is a substantial risk that these companies will distort the market and discriminate against private business.

In 2015 the Competition Council indicated harm caused to the market by the increasing dominance of municipal waste management companies and foreclosure of the markets to competition, publishing of municipal newspapers and their operation in the advertising market, organising of mandatory medical examinations only in municipal healthcare establishments, granting tax advantages to public entertainment event organizers and other cases of ignoring competitive neutrality.

A new condition was introduced to the State Administration Structure Law in 2015 following a recommendation of the Competition Council in order to restrict the formation of new state or municipal companies in the markets where private companies are successfully operating. It provides that prior to starting a new business or expansion of the existing business the public entity must consult the Competition Council and private business associations.



Chairwoman of the Competition Council S. Ābrama:

“If the businesses must compete on equal grounds, the state may also not give any exemptions to itself”



Laws and regulations harming competition

In 14 cases last year, the Competition Council pointed at the distortion that may be caused to competition by the regulatory framework.

Based on the opinion of the authority, the Saeima did not adopt amendments to the Law on Value Added Tax that would **discriminate against private organisers of concerts and other entertainment events.**

Regardless of the negative opinion by the Competition Council, amendments to the Waste Management Law were adopted, **which reduce opportunities of the private companies to operate in this business even further** and expanding monopoly power of the municipal managers. Regulation introducing a new levy on taxi companies for entering the Old Town and thus creating an additional administrative barrier discriminating against smaller taxi service providers was adopted in Riga by ignoring objections expressed by the Competition Council.

Last year the Competition Council issued guidelines for state and municipal decision-makers to ensure that the laws and regulations do not restrict competition. The authority also understands that while the guidelines help in improving knowledge and understanding, they do not eliminate anticompetitive conduct. Latvia therefore needs competition regulation prohibiting distortion of competition caused by the state and municipalities.



INTERNATIONAL OPERATION

Positive international recognition for the Competition Council

In evaluating the readiness of Latvia to join the OECD Competition Committee, last year the organisation evaluated the competition policy of Latvia and operation of the Competition Council. OECD **recognised the Competition Council to be a professional and effective authority** in the implementation of competition policy and the adoption of the best international practice, while it asked the state to strengthen the independence and resources of the authority.

Last year for the first time, the Competition Council was included in the prestigious *Global Competition Review* rating of the world leading competition authorities, receiving a three star rating. The rating includes 36 competition authorities recognised as leading due to their work results and organisation efficiency from approximately 140 world competition authorities.

International conferences take place in Riga

The Competition Council, in cooperation with the Ministry of Economics within the scope of the Latvian presidency of the Council of the European Union, organised **the conference of European Competition day gathering 170 participants** - leading world experts of the Competition Law, representatives of EU competition authorities, Latvian companies, NGOs and national regulatory authorities as well as judges and lawyers specialising in competition law.

The conference was opened by Margrethe Vestager, the European Commissioner of Competition. The participants were addressed by Professor Alison Jones, Eleanor M. Fox, William E. Kovacic, W. Michael Kramer, JD, CFE and other leading world competition law researchers.

This year in Riga, the Competition Council, based on a rotation principle, organised the XII Annual Baltic Competition Conference, gathering specialists from the competition authorities of Latvia, Lithuania, Estonia, as well as Finland, Sweden, Poland, Austria and Germany.



Foto: Dace Karuselis

The international edition *Global Competition Review* on the Competition Council: **“Perhaps the best enforcer in the region”**

The written media of Latvia have mentioned the Competition Council during the year in

1416 publications



COMMUNICATION AND COOPERATION

New ancillary materials for working with competition law

In 2015, the Competition Council drafted a **record number of guidelines** - a total of six.

The companies have received guidelines on how to properly prepare merger notifications. The guidelines also explain the situations when the rent of premises is considered as a merger, define oral hearing principles, and explain the application of the new retail trade regulation. In the Case Prioritisation Strategy, the Competition Council explains to companies and society in general how the authority establishes priority in investigated matters where its resources are allocated to.

In the guidelines for state and municipal decision-makers the Competition Council explains how to adopt decisions without creating unjustified competition restrictions.

We teach

Last year the staff of the Competition Council trained the companies, their associations and societies, explaining how to avoid breaching the law and protect their rights if the law is breached by others. This training is free of charge, and **any associations wishing to educate its members can apply for it at the Competition Council.**

Staff of the Competition Council address future entrepreneurs with guest lectures at the universities of Latvia. The lecturers of the authority also work with the organisers of public procurements, teaching them to recognise bid rigging. This cooperation has proven to be especially fruitful because a number of applications from the organisers of procurement on alleged cartels doubled last year.

A special format was created for cooperation with law firms. Thus last year, for the third time, the Competition Council organised the Lawyers Forum where competition experts and lawyers usually meeting in the scope of formal cases had an opportunity to discuss current topics on the application of Competition Law, and in open dialogue, looked for solutions to existing problematic matters.

MANAGEMENT OF THE AUTHORITY

More efficient methods of work

The Competition Council primarily uses its resources for the detection and prevention of the most severe violations of the Competition Law, protecting the interests of the general public. Small violations, however, also form a competition environment and are essential to the businesses involved therein, therefore, for their solution, the Competition Council uses alternative, but no less preventive methods, such as warnings and discussions.

Last year the authority **issued warnings to 29 companies** on possible involvement in a total of **11 episodes of prohibited agreements**. The Competition Council gives warnings without initiating a formal investigation if the alleged violation is small, has not been repeated and the company undertakes not to repeat it, as well as if the resources required for the investigation of the violation may exceed the public benefit. The discussion procedure allows smaller cases of abuse of a dominant position to be solved.

More economics

In 2015, the Competition Council **formed the Economic Analysis Division**. The new structural unit will be a significant step towards strengthening and extending economic and econometric analysis in investigations and starting to use the cartel screening method for the detection of violations. One of the first works of the new division in addition to involvement in investigations and sector inquiries, was to calculate what benefit is provided to the society of Latvia by the work of the Competition Council. Economists estimated savings taking place because the society does not have to overpay due to violations eliminated by the Competition Council and calculated that each euro in the budget of the authority has created a benefit of EUR 52 to society.



Staff of the Competition Council prepared and conducted trainings to its colleagues on

8 subjects

PRIORITIES AND TASKS OF 2016

The Competition Council, in accordance with the operational strategy, focuses its operation in three basic directions:

- ▶ detection of the most severe violations, first of all, detection of cartels and abuse of a dominant position, and imposing of severe penalties on violators;
- ▶ facilitation of fair competition in society, especially among public persons, thus ensuring equal conditions for all market participants;
- ▶ strengthening the institutional capacity and efficient management of competition protection processes.

In 2016, the authority will focus on the following matters:

- 1** Warnings and discussions – solutions for the effective prevention of smaller violations.
- 2** Protection of budgetary resources of Latvia and the EU, combatting the most common violation in Latvia – bid rigging.
- 3** Responsible merger control - pre-merger consultations for company convenience, fast and client-orientated review of notifications.
- 4** In-depth sector inquiries – analysis of competition, market development trends and entry barriers for the initiation of business in the national economy sectors that are the most important for Latvian consumers.
- 5** Knowledge that protects - seminars for businesses, associations, students, and state and municipal authorities.
- 6** Strengthening of the regulatory base, developing regulations for the implementation of amendments to the Competition Law and guidelines on the matters important to companies.
- 7** Improving of the operation of the authority, integrating the project and quality management methods in the operation and making maximum use of modern technologies.

Reference and communication

- ▶ fast - **@KPgovLV** briefly on news
- ▶ in detail - **www.kp.gov.lv** for decisions, guidelines, explanations and other materials of the authority
- ▶ personally – applying for a free seminar in your association, company or municipality
- ▶ anonymously - reporting on violations at **www.kp.gov.lv**
in a classical manner – asking questions by telephone (**67282865**) or by e-mail (**konkurence@kp.gov.lv**)